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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/450).

The Counter-Terrorism Committee has received the attached supplementary report from San Marino, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

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Annex

Note verbale dated 8 July 2002 from the Permanent Mission of San Marino to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of San Marino to the United Nations presents its compliments to the Counter-Terrorism Committee and has the honour to refer to the letter dated 15 April 2002 from the Chairman of the Committee to the Permanent Representative of the Republic of San Marino to the United Nations.

The Permanent Mission of the Republic of San Marino to the United Nations has the honour to forward to the Committee the attached report on anti-terrorism measures based on the questions asked by the members of the Committee and on the above-mentioned letter (see enclosure).

The Permanent Mission of the Republic of San Marino to the United Nations also has the honour to attach the following annexes* to the report:

- Draft law entitled "Disposizioni in materia di contrasto del terrorismo, del riciclaggio del denaro di provenienza illecita e dell'insider trading" (provisions concerning counter-terrorism, the laundering of criminal proceeds and insider trading; available in Italian only; English translation to be transmitted shortly).
- Law No. 123 of 15 December 1998, entitled "Law on anti-money-laundering and usury".
- Office of Banking Supervision circular No. 26 of 27 January 1999, entitled "Provisions for authorized intermediaries concerning the implementation of law No. 123 of 15 December 1998".
- Congress of State decision No. 1 of 5 November 2001, entitled "Provisions to monitor and counter the financing of international terrorism".
- Organization of police and law enforcement authorities in the Republic of San Marino.

* The annexes are filed with the Secretariat and are available for consultation.

Enclosure

Referring to the letter dated 15 April 2002 (Ref. S/AC.40/2002/MS/OC.49) written by Jeremy Greenstock, Chairman of the Counter-Terrorism Committee, we are pleased to provide the following clarifications and complements to the report of the Government of San Marino submitted in December 2001 pursuant to paragraph 6 of Security Council Resolution 1373 (2001):

- **Sub-paragraph 1 (b)**

  - The draft law announced orally to the CTC by the San Marino Permanent Mission was actually prepared by the deadline stated. Yet, the procedure for its parliamentary approval was slowed down first by a Government reshuffle occurred in spring, and subsequently – in late spring – by a Government crisis which eventually led to the formation of a brand new Government on 25 June 2002.

    Such draft law includes: i) the criminalization of terrorism and of the financing of terrorism; ii) some additions to the Anti-Money Laundering Law (No. 123 of 15 December 1998) incorporating the modifications recently occurred within the European Union and recommended by FATF and the Council of Europe; iii) a provision on the freezing of capitals or other financial assets or property held, or of any account or business relationship maintained with San Marino banking and financial intermediaries, and iv) rules on insider trading, introduced for domestic reasons. Copy of the draft law is herewith attached with the exception of the part related to insider trading.

    With regard to money laundering, there is furthermore the intention to add a provision criminalizing the laundering of "own proceeds".

  - Since 1990 the economic and financial system of San Marino has relied on a series of modern anti-money laundering provisions, as much was specified in the report submitted by San Marino in December 2001. The Anti-Money Laundering Law (No. 123/1998) and the relevant provisions issued by the Office of Banking Supervision are herewith attached, both in Italian (original) and English (translation).

Article 8 of the Anti-Money Laundering Law sets forth the obligation for financial intermediaries to report suspicious transactions to the supervisory body (Office of Banking Supervision), and for the latter to report to the Court.

Article 9 provides for administrative and criminal penalties in case of non compliance with the relevant law provisions by financial intermediaries.

The anti-money laundering legislation was only recently enacted (it was passed on 15 December 1998 and became effective on 5 January 1999), and therefore it is not possible to identify the crimes that may be considered as major sources of substantial illegal proceeds. So far, the Office of Banking has transmitted to the judicial authorities less than 10 suspicious transaction reports, still under criminal investigation. The statistical data supplied to the relevant international organisations (e.g. the Council of Europe) show that there is no domestic organised crime involved in laundering operations. This is inferred from the absence of reports of offences such as extortion, threats, murder, bag-snatching.

According to San Marino legislation, except for the cases of abetment, anyone concealing or disguising, or transferring money or facilitating the concealment or disguise, or transfer of money, knowing or being evident that such money is proceeds of crimes that do not constitute negligence or misdemeanours, for the purpose of concealing its true origin, commits the crime of money laundering. Equally, anyone using, or facilitating the use of money in economic or financial activities, knowing or being evident that such money is proceeds of crimes that do not constitute negligence or misdemeanours, commits the crime of money laundering. Even if the predicate offence is committed abroad, the fact is nonetheless prosecutable under the San Marino legal system and criminal procedures. Significantly, any property, as well as legal documents, acts or instruments evidencing title to or interest in such property are assimilated to money.

Confiscation in general is provided for in Article 147 of the Criminal Code. As a rule, confiscation is a consequence of the offender's conviction for an offence and it applies to the instrumentalities and intended instrumentalities of the offence, being the property of the offender. It also applies to things which represent the price, the product or "the profit" of the offence. Where the offence consists in the manufacture, use, carriage, possession, transfer or trade of goods which are illegal (e.g. arms, illicit drugs) confiscation applies, independently of a conviction, even to things which are not the property of the offender. Special confiscation provisions apply with respect to money laundering offences. These provisions are in part property-based and in part value-based. Article 3 of Law No. 123/1998 stipulates that conviction for an offence under Law No. 123/1998 results in the confiscation of the money and other assets or proceeds deriving from the offence without prejudice to the other provisions on confiscation in the Criminal Code.

- **Sub-paragraph 2 (a)**

  - Law No. 40 of 13 March 1991 stipulates that any purchase of firearms requires the prior authorization of the *Gendarmeria* (the Military Police). The request for purchasing firearms must indicate the correct identification of the buyer as well as the specifications of the weapon.

- **Sub-paragraph 2 (b)**

  - Because of its small territory (61 square kilometres) facilitating widespread controls and given its long-standing democratic traditions, San Marino has never experienced terrorist acts domestically. Hence, there has never been the need for establishing a special anti-terrorism agency or service.
    According to the draft law, the fight against terrorism is a responsibility of the law enforcement agencies, namely, the *Gendarmeria* (Military Police), the Civil Police and the *Guardia di Rocca* (border and institutional police). The activities of the three Corps come under the coordination of a Coordinator of the Police Forces, while such activities come directly under the Investigating Judge where criminal investigations are conducted (*see annex*).

  - With regard to the functions and tasks institutionally set forth by their respective regulations, the three Corps mentioned above determine their policies and strategies independently.

- **Sub-paragraph 2 (e)**

  - See clarifications to sub-paragraph 1 (b).

  - The draft law sets forth that acts of terrorism committed by anyone outside the territory of San Marino shall be prosecutable.

  - Under the provisions of the draft law, any violent act carried out for the purpose of terrorism, even if committed abroad, is a crime.

- **Sub-paragraph 2 (f)**

  - With regard to mutual assistance, the Republic of San Marino signed bilateral treaties on mutual legal assistance in criminal matters with Italy and France.

There are no other bilateral or multilateral mutual legal assistance treaties in effect. The San Marino judicial authorities, however, may provide general investigative assistance in criminal matters to other states requesting such assistance, even in the absence of a treaty or other formal agreement. Yet, in such cases the judicial authorities must first receive the go-ahead from the political authorities which make a political assessment of whether the request should be processed or not. Once the go-ahead is given, the judicial authorities make their legal assessment as to whether there are any legal obstacles to the execution of the request. If no legal obstacles are identified, the request is executed. This procedure has already been resorted to in cases considered appropriate. The criterion usually adopted by the political authorities in deciding whether to process a request in such circumstances, is the existence of relations between the requesting country and San Marino and the nature of such relations.

As for extradition, San Marino signed bilateral treaties with Belgium, France, Italy, United Kingdom, the Netherlands and USA. In the absence of an extradition treaty a person may still be extradited to the requesting country, subject to a legal assessment of the request by the judicial authorities within the limits laid down in Article 8 of the Criminal Code. As a rule, the extradition of nationals is prohibited unless it is otherwise expressly agreed by treaty. In so far as existing treaties are concerned, the extradition of own nationals is only prohibited by the treaty with Italy, but in this case, there is an obligation to prosecute. In the other treaties, the extradition of own nationals is discretionary, and in the case of France, there is an obligation to prosecute if extradition is refused.

With regard to cooperation among law enforcement agencies, Article 36 of the Convention on Friendship and Good Neighbourhood signed between Italy and San Marino on 31 March 1939 provides for cooperation in administrative matters, including administrative cooperation between police forces.

- **Sub-paragraph 2 (g)**

  - Borders are subject to random controls and constant patrolling by the police forces. Moreover, the San Marino law provisions regulating residence and stay permits (Law No. 95 of 4 September 1997 and Decree No. 111 of 7 October 1997) place a number of restrictions on the presence of foreigners in the country. They also impose an obligation for hotels and other accommodation facilities to identify their customers and report regularly to the *Gendarmeria*.

    San Marino has not acceded to the 1951 Geneva Convention on refugee status.

    It is worth noting that, in order to obtain information on people being investigated, the San Marino police forces have access, through a computerised link, to the database of the Italian

Ministry of the Interior.

Again, the small size of the country enables widespread and continued controls.

- **Sub-paragraph 3 (c)**

  - The European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959) were both signed on 29 September 2000. Their ratification is under way.

    The European Convention on the International Validity of Criminal Judgements (1970), was ratified on 26 February 2002 by virtue of a law of the San Marino Parliament and is entering into force on 18 July 2002.

  - Here is a list of the relevant agreements to which San Marino is a party:
    - Single Convention on Narcotic Drugs (New York, 1961), acceded to on 18 Sept. 2000;
    - Convention on Psychotropic Substances (Vienna, 1971), acceded to on 18 Sept. 2000;
    - Protocol amending the Single Convention on Narcotic Drugs (Geneva, 1972), acceded to on 18 Sept. 2000;
    - UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), acceded to on 18 Sept. 2000;
    - Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990), ratified on 18 Sept. 2000;
    - European Convention on the International Validity of Criminal Judgements (The Hague, 1970), ratified on 26 Feb. 2002 and entering into force on 18 July 2002;
    - European Convention on the Suppression of Terrorism (Strasbourg, 1977), ratified on 26 Feb. 2002 and entering into force on 18 July 2002;
    - International Convention for the Suppression of Terrorist Bombings (New York, 1997), acceded to on 26 Feb. 2002 and entered into force on 11 April 2002;
    - International Convention for the Suppression of the Financing of Terrorism (New York, 1999), ratified on 10 Dec. 2001 and entered into force on 10 April 2002.

- **Sub-paragraph 3 (e)**

  - The International Convention for the Suppression of Terrorist Bombings was acceded to by San Marino on 26 Feb. 2002 and entered into force on 11 April 2002. With regard to the other relevant international instruments related to terrorism, see the list provided in Sub-paragraph 3 (c) above.

- **Sub-paragraph 4**

  - To address the concerns expressed in paragraph 4 of the Resolution, San Marino became a party to the relevant international instruments (see list in sub-paragraph 3 (c) above) and also signed the UN Convention Against Transnational Organised Crime and its two Protocols (New York, 2000), on 14 December 2000.

    With regard to UN Security Council Resolution 1373 (2001) of 28 September 2001, the Government of the Republic of San Marino has adopted several provisions in supervision matters and to counter the financing of terrorism.

    In particular, by terms of its Decision No. 1 of 5 November 2001 – copy of which is attached in Italian and English–, the Government: invited the Office of Banking Supervision to continue to transmit to all banking and financial institutions the lists drafted by the supervisory or police bodies of other countries or International Organisations containing the names of individuals and organisations suspected of international terrorism; ordered that banking and financial institutions immediately freeze the capitals and any other resources or assets deposited with them, as well as block any other transaction suspected of being directly or indirectly linked to the individuals appearing in the above-mentioned lists, and that they promptly report back to the Office of Banking Supervision; and mandated the Office of Banking Supervision to issue all implementation provisions that it may deem necessary and to inflict, where appropriate, the administrative sanctions set forth in art. 9 of Law No. 123 of 15 December 1998 on Anti Money Laundering.

    The San Marino Parliament, during its sitting of 20 November 2001 and concluding a thorough debate on the stance of the Republic of San Marino in the light of the crisis caused by the tragic events of 11 September, adopted an Agenda by terms of which it approved the measures and initiatives taken by the Government, in particular its decision No. 1 of 5 November 2001. The Parliament took note of the fact, *inter alia*, that the Government initiatives have been centred upon "non-neutrality" in the face of terrorism, as terrorism is a factor of instability in the system of international relations, violates international law and constitutes a potential threat to the security of citizens.

    As early as 26 September 2001, the Office of Banking Supervision, by means of a Circular Letter, invited banking and financial institutions: to forward the names of natural and legal persons, both resident and non resident, in relation to whom financial transactions – that are liable of being linked, either directly or directly, to terrorist organisations known worldwide, may be reported; to monitor all transactions conducted by legal persons having entered into business relations of any type with residents in high-risk Arab countries; and to report to the Office of Banking Supervision, where appropriate.

    Since 4 October 2001, the lists of individuals and organisations suspected of international

terrorism disseminated by international supervisory and law enforcement bodies have been forwarded to banking and financial institutions.

The embargoes adopted by the United Nations with Resolutions No. 1267 of 15 October 1999, and No. 1333 of 19 December 2000 were formally received by the Currency Authority on 18 July 2000 and 8 October 2001 respectively.

It is worth recalling that on 11 October 2001 the Government of San Marino expressed, by addressing a note to the relevant US Authorities, its willingness to fully and actively cooperate in the common fight against terrorism.

This note was followed by a phone conversation between the Foreign Minister and the Minister of Finance of the Republic of San Marino and the US Undersecretary of the Treasury, which subsequently resulted in an agreement to cooperate in the fight against terrorism also through the monitoring and countering of any suspicious financial flows which may affect or have affected the financial system of San Marino.

- **Other matters**

  - We reserve to forward as soon as possible the organizational charts of the San Marino administrative machinery. We are here indicating the agencies and entities established to give practical effect to all the legislation that is seen as contributing to compliance with the Resolution:

    - the 3 police Corps (*Gendarmeria*, Civil Police and *Guardia di Rocca*), responsible for territory and immigration controls, and countering organized crime; the overall staff includes approx. 210 employees out of a population of 28,000 residents;

    - the Tax Office, responsible for controls and assessments in tax, fiscal and customs matters; the overall staff includes approx. 120 employees;

    - the Office of Banking Supervision, responsible for supervision over the banking and financial sector, anti-money laundering matters and matters related to the financing of terrorism; the staff is made up of 10 employees;

    - the ICS (Central Bank), responsible, *inter alia*, for controls over currency transactions, the overall staff includes approx. 45 employees.